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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION  
13

14 U.S. RIGHT TO KNOW,

15 Plaintiff,

16 v.

17 NATIONAL INSTITUTES OF HEALTH,

18 Defendant.  
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CASE NO. 4:25-cv-04490-DMR

**JOINT INITIAL CASE MANAGEMENT  
STATEMENT**

Date: September 3, 2025  
Time: 1:30 p.m.  
Location: Zoom videoconference  
Judge: Hon. Donna M. Ryu

1 Plaintiff U.S. Right to Know (“USRTK” or “Plaintiff”) and Defendant National Institutes  
 2 of Health (“NIH” or “Defendant”; together with Plaintiff, the “Parties”) submit this Joint Initial  
 3 Case Management Statement. As indicated below, because undersigned counsel for Defendant is  
 4 unavailable on the currently scheduled date of September 3, 2025, Defendant NIH respectfully  
 5 requests that the Court continue the Case Management Conference by two months, to **November**  
 6 **5, 2025**. Plaintiff U.S. Right to Know does not oppose continuing the date of the current Case  
 7 Management Conference.

### 8 **1. Jurisdiction and Service**

9 Plaintiff brought this action under the Freedom of Information Act (“FOIA”), 5 U.S.C.  
 10 § 552(a)(4)(B). This Court has jurisdiction under 28 U.S.C. § 1331. All parties have been  
 11 served. Defendant answered Plaintiff’s Complaint. There are no issues pertaining to personal  
 12 jurisdiction, venue, or service.

### 13 **2. Facts**

14 This action arises out of Plaintiff’s FOIA Requests dated June 11, 2024 (“Request One”)  
 15 and July 18, 2024 (“Request Two”). Request One generally sought records of communications  
 16 involving certain individuals related to COVID-19, specifically including communications that  
 17 had been deleted or for which deletion was attempted, as well as communications that were  
 18 conveyed on personal email accounts (including Gmail, Proton Mail or Tutanota) or text or  
 19 ephemeral messaging apps (such as Signal, Whatsapp, Telegram, Confide or Wire) of certain  
 20 identified NIH directors and several senior staff. *See* Dkt. No. 1 (“Compl.”) Ex. A. Request Two  
 21 generally sought certain communications involving an NIH employee named Dr. Michael Lauer.  
 22 *See id.* Ex. B. Plaintiff submitted the Requests by emailing them directly to the NIH FOIA  
 23 Officer, at the e-mail address of nihfoia@od.nih.gov. *See id.* ¶¶ 34, 38, 61, 62; Dkt. No. 12  
 24 (“Ans.”) ¶¶ 38, 62. As of the date Plaintiff filed its Complaint on May 28, 2025, the NIH had not  
 25 responded to the Requests. *See* Compl. ¶¶ 45, 51, 52, 67, 71, 72; Ans. ¶¶ 45, 51, 52, 67, 71, 72.

26 Counsel for the Parties met and conferred on August 8, 2025, in compliance with the  
 27 Court’s Order Setting Initial Case Management Conference and ADR Deadlines (ECF No. 5) and  
 28 have initiated discussions to determine whether this dispute can be resolved through a prompt

1 search and orderly production of responsive documents based on an agreed-upon production  
2 schedule.

3 **3. Legal Issues**

4 The legal issues in this matter include the timeliness, scope, and nature of Defendant's  
5 search for and production of records responsive to Plaintiffs' FOIA Requests; whether Defendant  
6 has met its obligations to Plaintiff under FOIA; and whether Plaintiff will be entitled to an award  
7 of attorneys' fees and other litigation costs. The Parties will continue to work in good faith to  
8 attempt to resolve Plaintiff's claims without intervention from the Court.

9 **4. Motions**

10 There are no prior or pending motions. If the Parties do not resolve Plaintiff's claims,  
11 they anticipate filing cross-motions for summary judgment. *See Sakamoto v. EPA*, 443 F. Supp.  
12 2d 1182, 1188 (N.D. Cal. 2006) ("It is generally recognized that summary judgment is a proper  
13 avenue for resolving a FOIA claim."). If the Parties must file cross-motions for summary  
14 judgment, they will meet and confer regarding a proposed briefing schedule for such motions.

15 **5. Amendment of Pleadings**

16 The Parties do not expect to add or dismiss any parties, claims, or defenses.

17 **6. Evidence Preservation**

18 The Parties have met and conferred under Rule 26 of the Federal Rules of Civil Procedure  
19 and have agreed to take reasonable and proportionate steps to preserve evidence relevant to the  
20 issues reasonably evident in this case. The Parties do not believe at this time that this case raises  
21 significant e-discovery issues.

22 **7. Disclosures**

23 The Parties agree that, with the Court's approval, initial disclosures are not necessary  
24 because this is a FOIA action.

25 **8. Discovery**

26 The Parties do not anticipate conducting discovery, at this time, because this is a FOIA  
27 action. No discovery has been taken by either Plaintiff or Defendant.  
28

1           **9.      Class Actions**

2           This lawsuit is not a class action.

3           **10.     Related Cases**

4           The Parties are unaware of any related cases before another judge of this Court.

5           **11.     Relief**

6           Plaintiff seeks declaratory relief establishing that Defendant's failure to comply with  
7           FOIA is unlawful, based on Defendant's (1) failure to provide a final determination for Request  
8           One and Request Two, (2) withholding non-exempt public records responsive to Requests One  
9           and Request Two, (3) failure to provide a timely estimated date of completion for Request One  
10          and Request Two prior to Plaintiff's filing their complaint, as required by 5 U.S.C. §  
11          552(a)(7)(B)(ii). Plaintiff also seeks a full, adequate and expedited search and production of the  
12          requested records and will seek reasonable costs and attorneys' fees as well as such further relief  
13          as the Court deems just and proper.

14          Defendant seeks a complete defense judgment and dismissal.

15          **12.     Settlement and ADR**

16          The Parties are amenable to a settlement conference with a magistrate judge at an  
17          appropriate time, but do not believe that the matter is ripe for ADR at this time. The Parties have  
18          filed their ADR certifications. The Parties will reassess regarding a formal request for ADR as  
19          the case progresses. The Parties will continue to meet and confer regarding potential settlement.

20          **13.     Other References**

21          The case is not suitable for reference to binding arbitration, a special master, or the  
22          Judicial Panel on Multidistrict Litigation.

23          **14.     Narrowing of Issues**

24          The Parties have met and conferred to narrow the issues in dispute, and they will continue  
25          to do so. If necessary, the Parties may narrow any issues by stipulation.

26          **15.     Scheduling**

27          The Parties agree to work to resolve this matter through a negotiated settlement or, if  
28          necessary, by cross-motions for summary judgment. The Parties submit, however, that setting a

1 further case schedule is premature at the time of the filing of this Joint Case Management  
2 Statement. The Parties are currently negotiating the scope of Defendant's search and the timing  
3 of any productions therefrom. Defendant respectfully requests that the Court continue the Case  
4 Management Conference by two months, to Wednesday, November 5, 2025.

5 Due to the necessity of a continuance arising from issues regarding the family of counsel  
6 for Defendant, as detailed herein, Plaintiff does not oppose the requested continuance. In advance  
7 of that Conference, the Parties will meet and confer further regarding Defendant's responses to  
8 the Requests, a production schedule for documents responsive to the Requests, and a proposed  
9 case schedule, as well as the nature of any exemptions that Defendant expects to claim at that  
10 time.

11 In further support of the Parties' request to continue the Case Management Conference,  
12 undersigned counsel for Defendant respectfully informs the Court that a member of his family is  
13 scheduled to undergo a medical procedure on September 3, 2025, and as a result he will not be  
14 available on the currently scheduled date for the Initial Case Management Conference.

15 **16. Trial**

16 The Parties do not anticipate needing a trial to resolve this FOIA action. The Parties  
17 anticipate this matter will be resolved through mutual negotiations or, if required, on cross-  
18 motions for summary judgment.

19 **17. Disclosure of Non-Party Interested Entities or Persons**

20 Defendant is not required to file a Certification of Interested Entities or Persons under  
21 Civil L.R. 3-15. As set forth in Plaintiff's Certification of Conflicts and Interested Entities and  
22 Persons, *see* Dkt. No. 9, the undersigned counsel for Plaintiff certifies that, other than the named  
23 parties, there is no such interest to report.

24 **18. Professional Conduct**

25 Counsel for the Parties have reviewed the "Guidelines for Professional Conduct."

26 **19. Other Matters to Facilitate the Just, Speedy, and Inexpensive Disposition**

27 The Parties have agreed to accept service of correspondence and productions by electronic  
28 means.

1 As indicated above, Defendant respectfully requests that the Court continue the Case  
2 Management Conference by two months, to Wednesday, November 5, 2025, while Plaintiff does  
3 not oppose the continuance.

4  
5 Respectfully submitted,

6 Dated: August 27, 2025

/s/ Richard A. Brody  
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12 *Attorneys for Plaintiff US Right to Know*

14 CRAIG H. MISSAKIAN  
15 United States Attorney

16 Dated: August 27, 2025

/s/ Kelsey J. Helland  
KELSEY J. HELLAND  
Assistant United States Attorney

18 *Attorneys for Defendant*

**ATTORNEY ATTESTATION**

I hereby attest, pursuant to Local Rule 5-1(i)(3), that I obtained the concurrence in the filing of this document from the signatories indicated by the conformed signature (/s/).

/s/ Kelsey J. Helland  
KELSEY J. HELLAND